

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

GARLAND K. COBLE,

Complainant,

and

AMERIDREAM MORTGAGE,

Respondent.

CHARGE NO(S): 2006CA0289
EEOC NO(S): 21BA52822
ALS NO(S): 06-303

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

Entered this 9th day of February 2010

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

The following facts were derived from the record file in this matter.

1. Over two years ago, on September 18, 2006, Complainant filed a Complaint against Respondent alleging he was discriminated against based on his race, sex and age.
2. This matter was set for an initial status hearing on January 4, 2007 when the parties were ordered to serve their initial discovery by January 19, 2007.
3. On January 12, 2007, Respondent filed its timely Verified Answer and served Complainant with its First Set of Interrogatories and Requests for Production of Documents.
4. On January 23, 2007, Respondent served a Request to Admit Facts and Genuineness of Documents on Complainant.
5. Approximately four weeks later, Respondent provided Complainant with a letter seeking responses to its Discovery requests.
6. After Complainant failed to respond to Respondent's letter, Complaint appeared at an October 4, 2007 status hearing and reported he never received the discovery requests because his mailman was not delivering mail correctly.
7. I then ordered Respondent to send Complainant its discovery requests for a second time, which Respondent did on October 9, 2007.
8. Once again, Complainant failed to answer the Respondent's discovery requests within in the applicable time period set forth in the Commission's procedural rules.
9. On January 31, 2008, Respondent filed a second Motion to Dismiss based on Complainant's failure to admit or deny the Requests to Admit.
10. That Motion to Dismiss was withdrawn and a Motion for Summary Decision was filed.
11. I denied the Respondent's Motion for Summary Decision on May 12, 2008 and set another status hearing for June 5, 2008.

12. At the time of the June 5, 2008 status hearing, I urged the parties to consider settlement discussions.

13. Respondent made a settlement offer and requested Complainant to think about it and respond by calling Respondent's counsel for discussions.

14. This matter was scheduled for a status hearing on August 7, 2008. Respondent appeared. Complainant failed to appear.

15. Respondent informed me that it had not heard from Complainant regarding its settlement offer.

16. I then verified with Respondent the Complainant's telephone number and again requested that the Respondent attempt to contact Complainant.

17. On August 8, 2008, Respondent served a copy of my August 7, 2008 Order on Complainant and filed a certificate of service with the Commission.

18. Because of Complainant's prior allegation of mailman problems, I instructed Respondent to serve the August 7, 2008 order by certified mail.

19. Respondent's counsel has reported that after two attempts by the post office to deliver the August 7, 2008 Order, it was returned to Respondent unopened and unclaimed.

20. On November 6, 2008, a status hearing took place. For the second consecutive time, Complainant failed to appear.

21. At the November 6, 2008 status hearing, Respondent reported that it had no communication with the Complainant since June of 2008.

22. I granted leave to Respondent to file a Motion to Dismiss by November 13, 2008, and ordered Complainant to respond by December 2, 2008. I also stated in my November 6, 2008 Order that Complainant's failure to respond to the Motion to Dismiss and comply with my orders may be grounds for dismissal. Respondent was also

ordered to serve my November 6, 2008 Order on Complainant and file a certificate of service with the Commission.

23. On November 13, 2008, Respondent served a copy of my November 6, 2008 Order on Complainant via certified mail and U.S. Mail, and filed a certificate of service with the Commission.

24. On November 13, 2008, Respondent filed its Motion to Dismiss.

25. On December 2, 2008, Complainant filed a response to the Motion to Dismiss.

26. On January 7, 2009, I entered an Order finding that dismissing the case was inappropriate because Complainant had filed a response to the Motion. Notwithstanding, I found Complainant's failure to appear without good cause shown, coupled with his prior failure to comply with my orders and Respondent's discovery requests to be grounds for sanctions. As such, Respondent was ordered to file a petition for fees, and Complainant was ordered to file his objections, if any, by January 30, 2009.

27. The January 7, 2009 Order set a status hearing for February 5, 2009 at 10:00 a.m. at the Commission's Chicago office.

28. The January 7, 2009 Order stated that a failure of a party to appear at the Commission's scheduled hearing without requesting a continuance, for good cause shown, reasonably in advance, or unreasonably complying with orders, or otherwise engaging in conduct which unreasonably delays or protracts proceedings, may result in dismissal of the case.

29. My January 7, 2009 Order was sent by the Commission to both Respondent's counsel and Complainant. Neither order was returned to the Commission.

30. On January 20, 2009, Respondent filed a Petition for Fees, requesting \$1,250.00 for fees and costs associated with bringing its Motion to Dismiss.

31. On January 27, 2009, Complaint filed a two point response to the Petition for Fees stating that he missed a court date due to health reasons and that he did not know there was a status hearing on January 20, 2009.

32. On January 29, 2009, the Commission's clerk sent a letter to Complainant informing him that it appeared he may not have served Respondent's counsel with his response to the fee petition and that he was required to comply with the statutes and rules applicable to this case, whether or not he was an attorney.

33. On February 5, 2009, as set forth in my January 7, 2009 Order, this matter was set for a status hearing. Respondent appeared. Complainant failed to appear.

CONCLUSIONS OF LAW

1. A complaint may be dismissed when a party fails to appear at a scheduled hearing without requesting a continuance reasonably in advance or unreasonably refuses to comply with an order or otherwise engages in conduct which unreasonably delays or protracts proceedings.

2. Complainant has failed to appear at several scheduled status hearings, has failed to respond to discovery requests, and has failed to comply with several of my orders. The appropriate sanction is dismissal of the Complaint, and the underlying charge, with prejudice.

DISCUSSION

Under Commission procedural rules, an Administrative Law Judge may recommend to the Commission that a complaint be dismissed where a party fails to appear at a scheduled status hearing, unreasonably refuses to comply with an order or otherwise engages in conduct which unreasonably delays or protracts proceedings. See **56 Ill. Admin. Code §5300.750(e)**.

A fundamental principle governing practice before the Commission is that complainants must diligently pursue their cases once they are docketed with the

Commission. Complainant has failed to appear for several scheduled status hearings. He has also failed to comply with several of my orders. He has failed to respond to discovery requests. Complainant's conduct is disrespectful to this Commission. His conduct is unreasonably delaying these proceedings. It is unfair to the Respondent to incur fees and costs, when Complainant's conduct clearly indicates his lack of genuine interest in prosecuting his claim in accordance with Commission procedural rules. As such, it is appropriate to dismiss his Complaint, with prejudice. **Aceves and Everlast Concrete, Inc. and Artech Concrete, Inc.**, IHRC, 12187, May 18, 2005.¹

RECOMMENDATION

I recommend the Commission dismiss the Complaint, and the underlying charge, with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
REVA S. BAUCH
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: February 9, 2009

¹ Prior to Complainant's failure to comply with my January 7, 2009 Order by failing to appear, as ordered, at the February 5, 2009 status hearing, I was prepared to enter an order requiring Complainant to pay most of Respondent attorney's fees and costs as per its fee petition filed on January 20, 2009.